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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

In re D.S., a Person Coming Under the  
Juvenile Court Law.

B209262  
(Los Angeles County  
Super. Ct. No. CK71659)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Robert Stevenson, Referee. Affirmed.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Plaintiff and Respondent.

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## **INTRODUCTION**

Father appeals from the order adjudicating his daughter D.S. a dependent of the juvenile court, entered after a contested hearing. Father also appealed from the subsequent disposition order in which the court terminated jurisdiction and entered a family court custody and visitation order.<sup>1</sup> Father assigns no error with regard to the disposition order. His sole contention on appeal is that the adjudication of juvenile court jurisdiction was not supported by substantial evidence. After reviewing the record, we conclude that substantial evidence supports the order, and we affirm the adjudication and disposition orders.

## **BACKGROUND**

In January 2008, the Department of Children and Family Services (Department or DCFS) was notified after father's 17-year-old stepdaughter E.G. reported to the police that he had sexually abused her. E.G. and her younger sister, father's 12-year-old daughter D.S., were placed in police custody. After the DCFS social worker (CSW) interviewed E.G., D.S., and both parents, D.S. was detained and placed in mother's home, where E.G. also resided at the time.

A petition was filed February 15, 2008, to bring E.G. and D.S. within the jurisdiction of the juvenile court, pursuant to Welfare and Institutions Code section 300. The contested adjudication hearing went forward May 28, 2008. After hearing the evidence and considering the DCFS reports, the court amended the petition to conform to proof, and dismissed some counts. The challenged factual allegations

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<sup>1</sup> Welfare and Institutions Code section 362.4 authorizes the juvenile court to make a custody order upon termination of jurisdiction, and provides that the order may be filed in family court in an existing custody matter, or in order to initiate a custody proceeding.

pertaining to father in the sustained counts of the petition, as later amended, read as follows:<sup>2</sup>

“[a-2 and b-3, and j-3] [F]ather to the child [D.S.] physically abused [D.S.]. Such physical abuse consisted of . . . striking the child’s head with [his] hands and forcing the child to kneel for one hour. . . .

[¶] . . . [¶]

“[b-1, d-1, and j-1] On numerous prior occasions, for a period of five years, . . . father . . . sexually abused [E.G.]. Such sexual abuse consisted of [father’s] fondling the child’s vagina, asking the child to orally copulate [him], forcing the child to remove the child’s clothes, forcing the child to lay [*sic*] naked on top of . . . father’s naked body and rubbing [his] naked body against the child’s. . . . Moreover, father installed a camera in the children’s bedroom which made the children very uncomfortable and [they] changed clothes in the closet. . . .

[¶] . . . [¶]

“[b-4 and j-4] On prior occasions, . . . father . . . physically abused the child [E.G.]. Such physical abuse consisted of [father’s] forcing the child to kneel for one hour. . . .”

In addition to the DCFS reports, the evidence supporting the allegations consisted primarily of the testimony of E.G. and D.S. E.G. testified that beginning when she was nine years old, and continuing until she was 15 years old, father (her stepfather) often abused her sexually during the time that mother and father were still living together. The incidents occurred when D.S. was either asleep, in the shower, or watching television. The first occurrence was in father’s bedroom, while his niece was in the living room. While E.G. was clothed, father touched her vaginal area with his hand. On later occasions, he touched her under her clothes. Sometimes father removed her clothing, and occasionally he placed his mouth on her vaginal area. Father sometimes made E.G. take off her clothes and lie down on him, and

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<sup>2</sup> We do not recite the facts in the counts sustained as to mother, as she has not appealed.

occasionally she saw his penis. Once he asked her to perform oral sex, but she refused. Usually, however, it was just touching.

E.G. testified that father placed a camera in the bedroom she shared with D.S., in order to monitor the children. For about a year, the camera operated in an upper corner of the room, so that the entire room was visible. E.G. went into the closet or the bathroom to change clothes, because she was uncomfortable doing so in front of the camera, and she encouraged D.S. to change in the closet or bathroom, as well.

E.G. testified that father physically disciplined her and D.S. by striking them and making them kneel. He struck them with his hands or a belt, and once, when D.S. did not throw something away after father told her to do so, he struck D.S. with a trash can. The edge of the can cut D.S.'s head, requiring a visit to the emergency room for a staple. When father disciplined E.G. and D.S. by making them kneel, they were required to press their noses against the wall. It was hard to breathe in that position, and D.S. would cry. E.G. testified that she never told her mother about the physical discipline for fear father would hit her harder if she told.

E.G. testified that she did not tell anyone about the sexual abuse because she was frightened and father would cry when he spoke about the possibility of her telling someone. Also, she asked for and received his promise that, if she allowed him to keep doing it, he would not harm D.S. Once, when E.G. was 10 years old, a social worker visited and asked whether father had ever touched her, but she said no, because the day before, father had instructed her what to say. E.G. testified that she was still frightened of father.

In January 2008, E.G. became aware that father was trying to get custody of D.S., and became worried because D.S. was often home alone with father.<sup>3</sup> On January 16, E.G. confided in her best friend and mother about the abuse. Mother took

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<sup>3</sup> Father had initiated a family court proceeding prior to the children's detention. On January 16, 2008, he obtained an order to show cause regarding the custody of D.S., with a temporary restraining order denying visitation to mother, later modified to allow monitored visits. No permanent order was filed, because this case intervened.

her to the police station, where she told the police everything she could remember at the time.

D.S. testified in chambers. She was not aware of any sexual molestation until E.G. reported it. Initially, D.S. had wanted to live with her father because she felt more protected and comfortable with him. Also, she believed father's assertion that E.G. had made up the story because she and mother were angry with him. Later, however, she no longer believed that E.G. had made up the story.

D.S. testified that, when father's tires were slashed the day after father and mother had first appeared in family court, he told D.S. that mother had done it, and told her to look around for broken fingernails. When they found none, father told D.S. that mother must have had a man do it for her.

D.S. described the trash can incident. She testified that once, when the sink was clogged, father had used the trash can to catch water. He told her to empty the water outside the house in a specific spot, but when she did not understand where he meant, he became angry, and hit her in the head with the trash can. D.S. testified that when father disciplined her by requiring her to kneel, she would have to stay in that position for one-half hour to two and a half hours at a time. She testified that father sometimes hit her with a belt or his hands, and that he kicked her. The year before, when she was 11 years old, father kicked her while she was on the ground, and then punched her in the ribs. D.S. did not think the kick and punch were accidental, because father appeared to be very angry with her. D.S. cried while she testified, and said that she and E.G. regularly flinched every time father got close to them, because they were afraid he would strike them.

Father testified, denying the sexual abuse and physical discipline, other than the kneeling. However, he claimed that he did not require D.S. to kneel more than 15 minutes at a time. Father testified that D.S. lied sometimes and once stole an iPod. He claimed that mother had purchased the bedroom camera so that she could smoke marijuana without discovery by the children, and that she helped him install it in the

girls' bedroom. The camera remained in place for two years, although father claimed that the camera was not turned on most of the time. Father knew the girls went into the closet or the bathroom to change clothes.

After hearing the evidence and argument of counsel, the court amended the petition, dismissed some counts, and declared the minors dependents of the juvenile court. The court scheduled the disposition hearing for June 26, 2008. Father filed a timely notice of appeal from the adjudication order. At the May 2008 disposition hearing, the court granted joint legal custody of D.S. to mother and father, and sole physical custody of D.S. to mother, with one weekly monitored visit for father. The court granted sole legal and physical custody of E.G. to mother. The court terminated dependency jurisdiction, but stayed the order pending a family court custody order. On July 9, 2008, the custody order was filed and the judgment terminating jurisdiction became effective. Father filed a notice of appeal from that order the same day.

## **DISCUSSION**

### ***1. Father's Contentions***

Father contends that the court's findings that he had physically abused D.S. and E.G. and that he had sexually abused E.G. were not supported by substantial evidence. He contends that the evidence of sexual abuse was insufficient because E.G. was not credible. Father contends that the evidence of inappropriate physical discipline was insufficient because E.G. and D.S. gave differing accounts of the abuse. He finally contends that the placement of the camera in the children's bedroom is an insufficient basis for jurisdiction, because there was no evidence at the time of the jurisdiction hearing that the camera was still operable.

For example, to demonstrate his point that E.G. was not credible, father summarizes the inconsistencies between E.G.'s testimony and her statements to the police, CSW, and dependency investigator (DI). Father also summarizes evidence that appears to conflict with E.G.'s testimony, such as the DI's opinion that E.G. seemed to

be well adjusted and that it seemed unlikely that a child who had experienced sexual abuse for five years would not show symptoms.

Father points to inconsistencies in D.S.'s statements to the DI and CSW, such as her claiming early in the proceedings that her parents' sole method of discipline was to impose restriction, but later stating that father made her kneel, and that he hit her with his hands and a belt. Father also points to D.S.'s testimony that she initially wanted to remain in father's custody because she felt more protected and comfortable with him. However, she also testified that father kicked her, punched her, and hit her in the head with a trash can, and that she was afraid of him.

In support of his contention that the evidence regarding the camera was an insufficient basis for taking jurisdiction, father points to E.G.'s testimony that she did not believe that mother thought the camera was "a big deal." He also points to mother's testimony that she did not consider, when the camera was operational, whether it was appropriate or inappropriate. Father also points to his own testimony that the camera was placed in the girls' bedroom so that they would not walk into the living room while the parents were engaged in private activities.<sup>4</sup>

## **2. *Standard of Review***

"In reviewing the jurisdictional findings . . . , we look to see if substantial evidence, contradicted or uncontradicted, supports them. [Citation.] In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court. [Citation.] (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) "We do not evaluate the credibility of witnesses, reweigh the evidence, or

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<sup>4</sup> Father misstates his own testimony. He claimed that the camera was mother's idea, that she bought it and installed it with his help so that she could smoke marijuana without discovery by the girls. He did not claim that it was there to facilitate both parents' private activities, although he testified that this was the excuse that would be given to the children if they came out of their room.

resolve evidentiary conflicts. . . . [We] affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

### **3. Substantial Evidence of Sexual and Physical Abuse**

E.G. testified at length about the sexual abuse she endured. “The testimony of a single witness is sufficient to uphold a judgment even if it is contradicted by other evidence, inconsistent or false as to other portions. [Citations.]” (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 366; see also Evid. Code, § 411.)

D.S. testified about inappropriate physical discipline, such as hitting with a belt, punching, kicking, and kneeling for up to an hour at a time. E.G. also testified that they were required to kneel, with their noses pressed to the wall, making it hard to breathe.

As father acknowledges, the juvenile court found E.G. to be a credible witness. Indeed, in finding both minors to be “very credible,” the court noted that it had been very difficult for E.G. to confront father in court and that D.S. cried when she described being kicked and punched in the ribs. The court did not find father credible, due to his body language and the manner in which he answered questions. The court expressly gave more weight to the children’s testimony than to father’s. In addition, the court expressed disbelief of father’s testimony that mother had bought the camera and intended to monitor the children. The court recognized that there were inconsistencies between E.G.’s various reports of the abuse, but found that the pertinent facts were consistent and very persuasive. As the reviewing court, we have no power to reweigh the evidence or reconsider the credibility of witnesses, because “[w]e review a cold record and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citation.]” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.) Further, we do not resolve conflicts or draw our own inferences or deductions from the evidence. (*Ibid.*) When the trial court has believed



a witness, we cannot reject that finding unless the testimony was either physically impossible or inherently improbable, which means that the “falsity must be apparent without resorting to inferences or deductions. . . . [E]ven testimony which is subject to justifiable suspicion does not justify the reversal of a judgment. . . .” (*People v. Mayberry* (1975) 15 Cal.3d 143, 150.)

Father does not contend, and we find no basis to find, that the behavior to which the children testified was impossible. Father draws the inference of falsity from E.G.’s seeming lack of posttraumatic symptoms, her inability to remember some details of the abuse, the absence of a refusal to visit mother’s home while father was present, her reporting the abuse for the first time on the very day of the first custody hearing, the girls’ earlier omission of father’s more egregious forms of physical discipline, and D.S.’s earlier opinion that E.G. had lied. Because father’s falsity contention is based solely upon inferences, he has not shown the children’s testimony to be impossible or inherently improbable. Thus, we must reject his contention and accept the juvenile court’s credibility finding. (See *People v. Mayberry, supra*, 15 Cal.3d at p. 150.)

Moreover, reasonable inferences can be drawn from the same evidence to support the order. E.G. was nine or 10 years old when the abuse began, and there was no expert testimony regarding what posttraumatic symptoms a child might display. The court considered E.G.’s appearance while testifying, and may have considered her failing grades in school. E.G. was not asked why she continued to visit her mother and sister while they lived in the home of an abusive parent figure, but such behavior in a child is not inherently improbable or even unbelievable. Nor is the timing of E.G.’s first report of the abuse unbelievable. She explained that she did not tell anyone while it continued, because she was afraid for her sister, and father promised not to touch her sister if E.G. submitted to him. Again, it was fear for her sister’s safety that made her reveal the abuse when she did -- D.S. was living alone with father, who was suing for sole custody. Finally, it is doubtful that any witness would necessarily remember

every detail of abuse that continued over a period of years, or that a victim would be able to recite her memories exactly every time she was questioned. The abuse stopped two years before E.G.’s testimony, and she might have worked to put much of it out of her mind. It is well known that when a child has been sexually abused over a period of years, some memories can be lost, and the victim often cannot recall details. (See, e.g., *People v. Johnson* (1995) 40 Cal.App.4th 24, 26.)

#### **4. Evidence of Continuing Conduct**

Father cites *In re Nicholas B.* (2001) 88 Cal.App.4th 1126 (*Nicholas B.*), and *In re Rocco M.* (1991) 1 Cal.App.4th 814 (*Rocco M.*), for the holding that “[w]hile evidence of past conduct may be probative of current conditions, ‘the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; “[t]here must be some reason to believe the acts may continue in the future.” [Citations.]’” (*Nicholas B.*, at p. 1134, quoting *Rocco M.*, at p. 824.) Father contends that the rule is applicable here, and that the jurisdictional order must fail because there was no evidence that he ever again intended to operate the camera in the girls’ room.

We agree that past conduct *standing alone* does not establish a substantial risk of harm absent some reason to believe the acts may continue in the future. (*Nicholas B.*, *supra*, 88 Cal.App.4th at p. 1134; *Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) However, “a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.” (Welf. & Inst. Code, § 300, subd. (a).) Thus, evidence of an ongoing pattern of abuse supplies substantial evidence of a substantial risk of harm in the future. (See *In re Veronica G.* (2007) 157 Cal.App.4th 179, 185-186 & fn. 4.) It is the allegation of a single, isolated instance of abuse and a substantial lapse of time since its

occurrence, that will require evidence that it is likely to recur. (*In re David H.* (2008) 165 Cal.App.4th 1626, 1643-1644.)

Here, the placement of the camera was not the only abusive act alleged against father. The evidence showed a pattern of sexual abuse and abusive physical discipline. Further, the camera's operation in the girls' bedroom was not an isolated, single incident, but continued for two years. We conclude that substantial evidence established a substantial risk of serious future injury.

**DISPOSITION**

The jurisdictional and dispositional orders are affirmed.

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BAUER, J.\*

We concur:

RUBIN, ACTING P. J.

FLIER, J.

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\* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.